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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**  
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12 CARLOS ARMAS-RAMIREZ,  
13  
14 vs. Petitioner,  
15 ANTHONY CERONE, Field Office  
16 Director Enforcement, et.al.,  
Respondents.

CASE NO. 07cv555 WQH (JMA)

**ORDER DISMISSING  
PETITION WITHOUT  
PREJUDICE**

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18 HAYES, Judge:

19 The matter before the Court is the Petition for Writ of Habeas Corpus (“Petition”)  
20 pursuant to 28 U.S.C. § 2241 filed by Carlos Armas-Ramirez (“Petitioner”). (Doc. # 1.)

21 **I. Background**

22 On March 23, 2007, Petitioner filed the Petition, asserting that he has been illegally held  
23 in detention without bond by the Department of Homeland Security (“DHS”) since May 4,  
24 2004. (Doc. # 1.)

25 On May 16, 2007, this Court issued an Order to Show Cause, which states, in part:

26 Respondents are ORDERED TO SHOW CAUSE no later than June 18, 2007  
27 why the petition should not be granted by: filing a written return; filing copies  
28 of all documents, orders and transcripts relevant to the petition; and filing a  
memorandum of law and fact fully stating Respondents’ position and making a  
recommendation regarding the need for an evidentiary hearing on the petition.

1 (May 16, 2007 Order to Show Cause, Doc. # 4, at 2.)

2 On June 15, 2007, Respondents filed "Government's Return to Petition for Writ of  
3 Habeas Corpus" ("Return") which states, in full:

4 Petitioner Armas complains that he is being detained without bond pending his  
5 removal proceedings, which were recently reopened and remanded to the  
6 Immigration Judge. On June 14, 2007, the Department of Homeland Security  
set bond in the amount of \$5000. [See attached exhibit.] Therefore, this case  
should be dismissed as moot.

7 (Doc. # 5.) The exhibit attached to the Return is a document signed by Respondent Anthony  
8 Cerone, Assistant Field Office Director for U.S. Immigration and Customs Enforcement setting  
9 Petitioner's bond at \$5,000.

10 On June 25, 2007, Petitioner filed a "Return in Answer to Government to Petition for  
11 Writ of Habeas Corpus" ("Traverse"), which states, in part: "Petitioner ask[s] this Court to  
12 have an individualized bond hearing before a neutral judge, to have a bond reduction or to be  
13 release[d] on its own recognizance; due to the fact that Petitioner is indigent and he has been  
14 in custody of DHS for over three years." (Doc. # 7.)

15 On July 13, 2007, this Court issued an Order stating in part:

16 No later than twenty days from the date this Order is filed, Respondents shall  
17 file an amended Return which complies with the Court's May 16, 2007 Order  
18 to Show Cause requiring Respondents to show cause 'why the petition should  
19 not be granted by: filing a written return; filing copies of all documents, orders  
20 and transcripts relevant to the petition; and filing a memorandum of law and fact  
21 fully stating Respondents' position and making a recommendation regarding the  
22 need for an evidentiary hearing on the petition.' (May 16, 2007 Order to Show  
Cause, Doc. # 4, at 2.) If Petitioner wishes to reply to the amended Return, he  
may do so by way of a traverse filed no later than twenty days after the date  
Respondents file the amended Return.

21 Additionally, Respondents shall allow Petitioner review of his bond  
22 determination pursuant to 8 C.F.R. § 1003.19.

23 (Doc. # 8, at 3.)

24 On July 26, 2007, Respondents filed "Government's Supplemental Return to Petition  
25 for Writ of Habeas Corpus," which presented evidence that on June 22, 2007, Petitioner posted  
26 the \$5,000 bond and was released from DHS custody. (Doc. # 9, Ex. 11.) Respondents also  
27 presented evidence indicating that on April 25, 2007, the Board of Immigration Appeals  
28 remanded Petitioner's removal proceedings to the Immigration Judge for decision. (*Id.*, Ex.  
2.) Respondents argued that the Petition should be dismissed for lack of jurisdiction and that

Petitioner has failed to pursue his administrative remedies which remain available to him to challenge the amount of the bond.

On July 31, 2007, the Court's July 13, 2007 Order was returned by the Post Office as undeliverable because Petitioner had not left a forwarding address with the DHS detention facility. (Doc. # 11.) Petitioner has not provided the Court with his current address as required by Local Civil Rule 83.11 and has not filed a response to Respondents' Supplemental Return.

## **II. Discussion**

The record establishes that Petitioner has received a bond hearing, that bond was set, and that Petitioner posted bond and was released. Under these facts, the sole remaining issue in this case could only be the propriety of the determination by the DHS to set a \$5,000 bond.

According to the applicable regulations, Petitioner has administrative remedies he may pursue if he is dissatisfied with the "custody determination [by the DHS] . . . including the setting of a bond" and/or the "the terms of his release." 8 C.F.R. § 1236.1(d)(1) (stating that the appeal must be filed within seven days of his release); *see also* 8 C.F.R. § 1236.1(d)(2) ("After expiration of the 7-day period in paragraph (d)(1) of this section, the respondent may request review by the district director of the conditions of his or her release."); 8 C.F.R. § 1236.1(d)(3) ("An appeal relating to bond and custody determinations may be filed to the Board of Immigration Appeals in the following circumstances: . . . (ii) The alien, within 10 days, may appeal from the district director's decision under paragraph (d)(2)(i) of this section.").

The Ninth Circuit "require[s], as a prudential matter, that habeas petitioners exhaust available . . . administrative remedies before seeking relief under § 2241." *Castro-Cortez v. I.N.S.*, 239 F.3d 1037, 1047 (9th Cir. 2001) (citing *U.S. v. Pirro*, 104 F.3d 297, 299 (9th Cir. 1997); *Brown v. Rison*, 895 F.2d 533, 535 (9th Cir. 1990)), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, --- U.S. ----, 126 S. Ct. 2422 (2006).

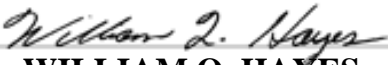
The record before the Court shows that Petitioner did not pursue his available administrative remedies to contest the bond determination by the DHS and has been released. (Doc. # 9 at 3.) Petitioner would be required to exhaust his available administrative remedies

1 prior to continuing an action pursuant to § 2241 to challenge his bond determination. *See*  
2 *Castro-Cortez*, 239 F.3d at 1047. Accordingly, based upon the record before the Court, this  
3 action is dismissed without prejudice.

4 **III. Conclusion**

5 For the reasons stated above, the Petition is hereby **DISMISSED WITHOUT**  
6 **PREJUDICE**. The Clerk of the Court shall close this case.

7 DATED: August 30, 2007

8   
9 **WILLIAM Q. HAYES**  
United States District Judge